



COLORADO
Department of Education

Title IX of the Education Amendments of 1972

2017

Rebekah Ottenbreit, ELD Specialist and Title IX State Coordinator

Agenda

- Title IX overview
- District responsibilities
- Issues covered under Title IX
- Resources
- Needs assessment

Together We Can

Vision

All students in Colorado will become educated and productive citizens capable of succeeding in society, the workforce, and life.

Mission

The mission of the Colorado Department of Education is to ensure that all students are prepared for success in society, work, and life by providing excellent leadership, service, and support to schools, districts, and communities across the state.



Overview

The purpose of Title IX of the Education Amendments of 1972 is to eliminate discrimination on the basis of sex in any education program or activity receiving Federal financial assistance.

District Responsibilities

- Designation of **at least one** responsible employee to coordinate and carry out district compliance with Title IX
- Write and publish a **nondiscrimination policy**
- Adopt and publish **grievance procedures** providing for prompt, equitable resolution of student and employee Title IX complaints

Designation of Title IX Coordinator

- **Designation of a Title IX Coordinator**
 - At least one, possibly multiple
 - If multiple, must designate lead
 - Avoid designating an employee whose other job responsibilities may create a conflict of interest
 - Lead coordinator should report directly to senior leadership
- **Notify all students and employees of the lead Title IX contact's**
 - Name
 - Office address
 - Telephone number
 - E-mail address (can be generic)
- **Must be widely distributed and should be easily found on the district website and communicated through various publications**



Title IX Coordinator Duties

- Participate in writing the notice of nondiscrimination
- Coordinate writing of grievance procedures for resolving Title IX complaints
- Coordinate response to all Title IX complaints

Notice of Nondiscrimination

- **Notice of nondiscrimination must include**
 - Does not discriminate on the basis of sex
 - Title IX coordinator's contact information
 - Questions may be referred to the Title IX coordinator
- **Must be widely distributed and should be easily found on the district website and communicated through various publications such as:**
 - Staff communication—district newsletters, letters from human resources, other district memoranda
 - Families/community—school newsletters, local newspapers, other school or district communications to families/community

Grievance Procedures

- Written in language that is **easily understood**, appropriate for the age of the audience, and is **accessible to English learners and students with disabilities**
- Incorporate all of the elements required for **prompt and equitable resolution** of Title IX complaints, consistent with the Title IX regulations and Office for Civil Rights (OCR) guidance
- Provide information regarding Title IX requirements. Help students, parents/guardians, employees, and school law enforcement understand the grievance procedures

Grievance Procedures

- **Specify the time frame within which:**
 - The school will conduct a full investigation
 - Both parties receive a response regarding the outcome
 - Appeal process, if applicable
 - Investigations typically take 60 calendar days
 - What OCR considers timely will vary depending on the complexity of the investigation
- **Both parties must receive written notification of the outcome**
- **A law enforcement investigation does not relieve the school from the obligation to conduct it's own Title IX investigation**

Coordination of Response to Title IX Complaints

- **Ensure all complaints are handled properly, may include:**
 - Informing all parties regarding the process
 - Notifying all parties regarding grievance decisions
 - Right to and procedures for appeal, if any
 - Monitoring compliance with all requirements and timelines
 - Maintaining grievance and compliance records
 - Providing assistance to school law enforcement, if applicable
 - Identify and address patterns or systemic problems
 - Assess effects on school/district climate
 - Could include coordination and analysis of an annual climate survey

Resources

- Letter to Title IX Coordinators

<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201504-title-ix-coordinators.pdf>

- Title IX Resource Guide

<http://www2.ed.gov/about/offices/list/ocr/docs/dcl-title-ix-coordinators-guide-201504.pdf>

Anti-Retaliation Provision

- **It is unlawful to retaliate against individuals, including Title IX Coordinators, for:**
 - Filing a Title IX complaint
 - Participating in a Title IX investigation, hearing or proceeding
 - Advocating for others' Title IX rights
- **Retaliation may look like:**
 - Preventing the student from participating in school activities
 - Giving the student a failing grade
 - Threatening expulsion

Sex Discrimination Issues

- **Athletic Opportunities and Benefits**
- **Pregnant or Parenting Students**
- **Sex-Based Harassment**
- **Single Sex Classes and Schools**
- **STEM**

Athletic Opportunities and Benefits

- **34 C.F.R. 106.41(a) requires institutions “to provide equal athletic opportunity for members of both sexes.”**

Some factors that are considered:

1. Whether the selection of sports and level of competition accommodate the interests and abilities of members of both sexes
2. Provision and maintenance of equipment and supplies
3. Scheduling of game and practice times
4. Travel and per diem allowances
5. Opportunity for coaching and academic tutoring
6. Assignment and compensation of coaches and tutors
7. Locker rooms, practice and competitive facilities
8. Medical and training facilities/services
9. Housing and dining facilities/services
10. Publicity



The 3 Part Test



- 1979 Intercollegiate Athletics Policy Interpretation sets out a three-part test that the OCR also uses

<https://www2.ed.gov/about/offices/list/ocr/docs/t9interp.html>

- In compliance if meeting **any 1 part** of the test
 1. The number of male and female athletes is substantially proportionate to their respective enrollments; or
 2. The institution has a history and continuing practice of expanding opportunities in response to developing interests and abilities of the underrepresented sex; or
 3. The school/district is fully and effectively accommodating the interest and abilities of the underrepresented sex

The 3 Part Test



- **1996 Clarification** of Intercollegiate Athletics Policy Guidance provides guidance on all three parts of the three-part test
- **2003 Further Clarification** of Intercollegiate Athletics Policy Guidance Regarding Title IX Compliance provides examples
- **The 2010 Dear Colleague letter**
<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-20100420.pdf>
 - Focuses on Part 3 of the 3 Part Test
The school/district is fully and effectively accommodating the interest and abilities of the underrepresented sex.

Part 3 of the 3 Part Test



- **2010 Dear Colleague letter withdraws 2005 documents**
 - Additional Clarification of Intercollegiate Athletics Policy: Three Part Test—part three
 - User's Guide to Student Interest Surveys under Title IX
 - Technical report
- **3 questions to determine whether an institution is in compliance with Part 3**
 1. Is there unmet interest in a particular sport?
 2. Is there sufficient ability to sustain a team in the sport?
 3. Is there a reasonable expectation of competition for the team?

All Federal policies on Part 3 except for the 2005 Additional Clarification, User's Guide and Technical Report remain in effect.





Student Surveys

- The 2010 Dear Colleague letter provides technical assistance on the nondiscriminatory design and implementation of student interest surveys
 - OCR uses multiple indicators to evaluate compliance with part 3
 - OCR will not accept reliance on survey alone
 - OCR does not consider nonresponse to surveys as evidence of lack of interest or ability in athletics
- Use of student surveys is not required
- Q&A RE: 2010 Dear Colleague letter
<http://www2.ed.gov/about/offices/list/ocr/docs/title9-qa-20100420.html>

Athletic Activities Counted

- **OCR considers:**

- Program structure and administration
 - Whether the operating budget and coaching staff are provided in a manner consistent with established varsity sports
 - Whether the participants are eligible for athletic scholarships and awards
- Team preparation and competition
 - Practice opportunities
 - Competitive opportunities
 - Opportunities for pre/and or post season competition
 - The primary purpose—athletic competition vs promote other athletic activities



Resources--Athletics

- 1979 Intercollegiate Athletics Policy

<https://www2.ed.gov/about/offices/list/ocr/docs/t9interp.html>

- 1996 Clarification

<http://www2.ed.gov/about/offices/list/ocr/docs/clarific.html#two>

- 2003 Further Clarification

<http://www2.ed.gov/about/offices/list/ocr/title9guidanceFinal.html>

- 2010 Dear Colleague Letter

<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-20100420.pdf>

- Q&A RE: 2010 Dear Colleague Letter

<http://www2.ed.gov/about/offices/list/ocr/docs/title9-qa-20100420.html>

- Guidance on Athletic Activities Counted for Title IX

<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-20080917.html>



Pregnant or Parenting Students

- **Title IX prohibits discrimination based on a student's:**
 - past pregnancy
 - current pregnancy
 - childbirth
 - false pregnancy
 - termination of pregnancy
 - recovery from any of these conditions



Pregnant or Parenting Students

- It is **illegal** under Title IX for schools **to exclude pregnant students (or students who have been pregnant)** from participating in any part of an educational program, including extracurricular activities.
- Any special services provided to students who have temporary medical conditions must also be provided to pregnant students.
- A school **must excuse** a student's pregnancy or childbirth related **absences** for as long as the student's doctor deems medically necessary.

School Responsibilities

- **Allow the pregnant student to continue participating in classes and extracurricular activities with out requiring a doctor's note unless the school requires a doctor's note from all students being treated by a doctor**
 - Allow the pregnant student to choose whether or not she wants to participate in special instructional programs or classes for pregnant students
- **Provide reasonable adjustments**
 - Larger desk
 - Elevator access
 - Frequent restroom visits
- **Excuse pregnancy or childbirth related absences for as long as doctor deems necessary**

School Responsibilities

- **Allow the student to return to the same academic and extracurricular status as before medical leave**
 - Opportunity to make up missed work
 - Opportunity to make up participation/attendance
- **Ensure teachers understand Title IX requirements related to excused/medical absences**
- **Provide pregnant students with the same special services provided to students with temporary medical conditions, such as:**
 - Homebound instruction
 - At-home tutoring
 - Independent study
- **Protect the student from harassment based on sex, pregnancy or related conditions**

Resources—Pregnancy/Parenting

- June 2013 Dear Colleague Letter

<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201306-title-ix.pdf>

- Know Your Rights: Pregnant or Parenting? Title IX Protects You From Discrimination at School

<http://www2.ed.gov/about/offices/list/ocr/docs/dcl-know-rights-201306-title-ix.pdf>

- Supporting The Academic Success of Pregnant and Parenting Students

<http://www2.ed.gov/about/offices/list/ocr/docs/pregnancy.pdf>

Sexual Harassment

- **Defined as:**

- Sexual in nature
- Unwelcome
- Denies or limits a student's ability to participate in or benefit from a school's education program

- **Includes:**

- Sexual harassment
- Sexual violence
- Gender-based harassment

- **Can affect male or female students**

- **The harasser and the victim can both be of the same sex**

- **Conduct can be verbal, nonverbal or physical**

Gender-Based Harassment

- Title IX prohibits sexual harassment and gender-based harassment of **all students**, regardless of the actual or perceived sexual orientation or gender identity of the harasser or target.
- Gender-based harassment includes:
 - Verbal, nonverbal, or physical
 - Aggression, intimidation, or hostility
 - Based on sex or sex-stereotyping
 - Even if the acts do not involve sexual conduct

Sexual Harassment Investigations

- Schools may have an obligation to respond to sexual harassment that **initially occurred off school grounds**.
- If a complaint is filed, **regardless of where the conduct occurred**, the school must process the complaint in accordance with its established procedures.
- Students often experience the **continuing effects** of sexual harassment **within the school setting**, resulting in a hostile educational environment.
- A school that **knows, or reasonably should know**, about possible harassment must promptly investigate and take prompt and effective next steps.

Sexual Harassment Investigations

- A law enforcement investigation **does not** relieve the school from the obligation to conduct its own Title IX investigation
- School investigations must be:
 - Prompt
 - Thorough
 - Impartial
- Take steps to protect the complainant during the investigation
 - Notify complainant of his or her options to avoid contact with the alleged perpetrator
 - Allow the student to change academic situations, as appropriate
 - Steps should minimize the burden on the complainant
 - Ensure complainant is aware of his/her Title IX rights and any available resources, such as counseling

Sexual Harassment Investigations

- ***“...it is improper for a student who complains of harassment to be required to work out the problem directly with the alleged perpetrator...”*** (Russlynn Ali, Assistant Secretary for Civil Rights, April 4, 2011 Dear Colleague letter, page 8)

- **Must use a “preponderance of the evidence” standard**

➤ It is more likely than not that sexual harassment or violence occurred

NOT

- **The “clear and convincing” standard**

➤ It is highly probable or reasonably certain that the sexual harassment or violence occurred

“...is a higher standard of proof...inconsistent with the standard of proof established for violations of civil rights laws...and thus not equitable under Title IX.” (Russlynn Ali, Assistant Secretary for Civil Rights, April 4, 2011 Dear Colleague letter, page 11)



Sexual Harassment Investigations

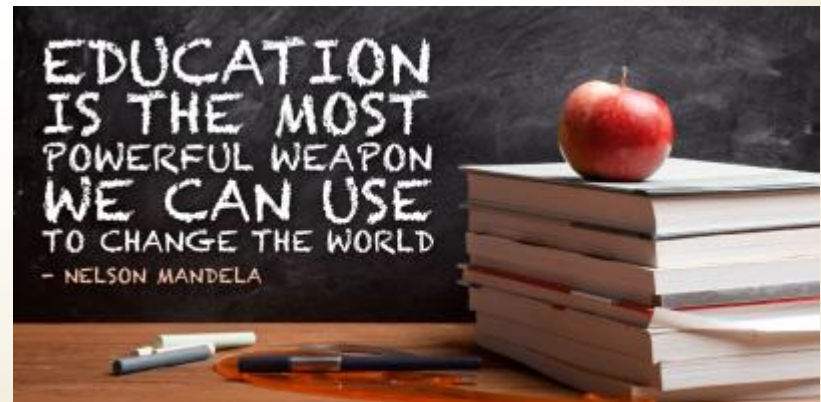
- **If sexual harassment has occurred, include steps to:**
 - End the harassment
 - Eliminate any hostile environment
 - Address the effects of the harassment
 - Prevent the harassment from recurring
 - Protect the student from retaliation

Remedies for the Complainant

- **May include, but are not limited to:**
 - Provide an escort to ensure the complainant can safely move between classes/activities
 - Ensure complainant and alleged perpetrator do not attend the same classes
 - Moving the complainant or alleged perpetrator to another school within the district
 - Providing counseling services
 - Providing medical services
 - Providing academic support, such as tutoring
 - Arranging for the complainant to re-take a course
 - Reviewing any disciplinary actions taken against the complainant to check for a causal connection between the harassment and the misconduct

Education and Prevention

- **OCR recommends preventative education programs that include:**
 - What constitutes sexual harassment and sexual violence
 - School's policies, procedures, and consequences
 - How to report sexual harassment and sexual violence
 - For educators and students
- **Schools should regularly assess student activities to ensure they do not violate policies against sexual harassment and sexual violence**



Training for Educators

The National Center on Safe Supportive Learning Environment
U.S. Department of Education Office of Safe and Healthy Students
<https://safesupportivelearning.ed.gov/safe-place-to-learn-k12>

- 4 online training modules
- Preventing peer-to-peer sexual harassment
- Recognizing and responding to sexual harassment
- Guide for administrators
- Coordinated response team planning guide
- Trauma sensitivity training module
- Resources

Student Education

- **Possible avenues:**
 - New student orientation
 - Student athletes and coaches
 - School assemblies
 - Back to school nights



Educational Programs

Colorado School Safety Resource Center

www.colorado.gov/CSSRC

- Kidpower (PK-12th grades)

<http://kidpowercs.org/>

- Safety Smarts (PK-12th grades)

<http://www.voicescarrycac.org/>

- S.A.R.A., Inc.

http://www.sarainc.org/programs_services

- Stop Bullying NOW! (3rd-6th grades)
- Safe Dates (5th-12th grades)
- Voices (Middle and High School)

- Jana's Campaign (Middle and High School)

<http://www.janascampaign.org/>

- Coaching Boys Into Men (High School)

<http://www.coachescorner.org/>



Resources—Sexual Harassment

- October 2010 Dear Colleague Letter on Harassment and Bullying
<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf>
- April 2011 Dear Colleague Letter on Sexual Harassment
<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf>
- Sexual Harassment: It's Not Academic pamphlet
<http://www2.ed.gov/about/offices/list/ocr/docs/ocrshpam.pdf>
- Revised Sexual Harassment Guidance (Jan 2001)
<http://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf>
- Know Your Rights: Title IX Prohibits Sexual Harassment and Sexual Violence Where You Go to School
<http://www2.ed.gov/about/offices/list/ocr/docs/title-ix-rights-201104.pdf>
- Know Your Rights: Title IX Requires Your School to Address Sexual Violence
<http://www2.ed.gov/about/offices/list/ocr/docs/know-rights-201404-title-ix.pdf>



Single Sex Classes and Schools

- Title IX generally prohibits sex-based discrimination in educational programs or activities that receive Federal funding
- Section 1681(a) allows two limited exceptions for single sex classes or activities within a coeducational school
 - Any program or activity specifically intended for the promotion of Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference
 - Father-son or mother-daughter activities

These exceptions are allowable only if opportunities for reasonably comparable activities are provided for students of the other sex

Single Sex Classes

- **Specific types of classes, or parts of classes, within a coeducational school that may be segregated by sex:**
 - Physical education during participation in contact sports
 - Parts of classes that deal with human sexuality
 - Non-vocational classes and activities that meet certain criteria

For details on the criteria, see Questions and Answers on Title IX and Single-Sex Elementary and Secondary Classes and Extracurricular Activities:

<http://www2.ed.gov/about/offices/list/ocr/docs/faqs-title-ix-single-sex-201412.pdf>

The OCR recommends consultation with legal counsel prior to offering single-sex classes

Single Sex Schools

- **Title IX does not apply to admissions policies of non-vocational elementary and secondary schools**
 - As long as such policies do not cause students, on the basis of sex, to be excluded from, or denied the benefits of, an educational program or activity receiving Federal financial assistance
 - Students of the opposite sex must have access to a comparable school, with a comparable curriculum, that is also single sex



May be other legal implications



Consult with legal counsel



Resources—Single Sex Classes and Schools

- Guidelines Regarding Single Sex Classes and Schools

<http://www2.ed.gov/about/offices/list/ocr/t9-guidelines-ss.html>

- Questions and Answers on Title IX and Single-Sex Elementary and Secondary Classes and Extracurricular Activities

<http://www2.ed.gov/about/offices/list/ocr/docs/faqs-title-ix-single-sex-201412.pdf>



- In 2004, women earned 58% of all bachelor's degrees, but only:
 - 25% in computer science
 - 22% in physics
 - 21% in engineering
- In 2004, women earned 45% of all doctoral degrees, but less than 33% of chemistry, computer sciences, math, physics, and engineering degrees were earned by women

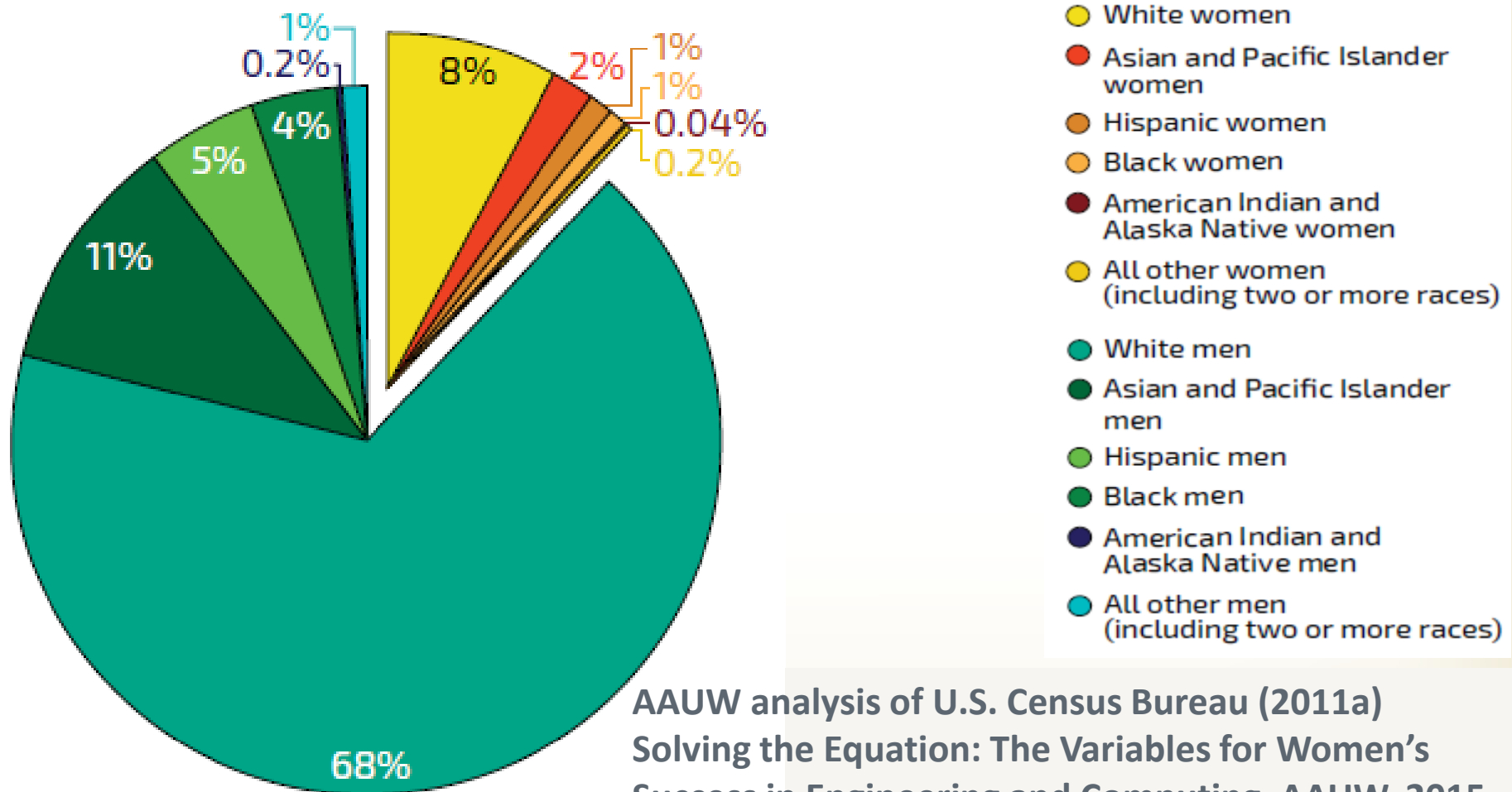
<http://ies.ed.gov/ncee/wwc/Docs/PracticeGuide/20072003.pdf>

- The number of women in computing **fell from 35% in 1990 to 26% in 2015**

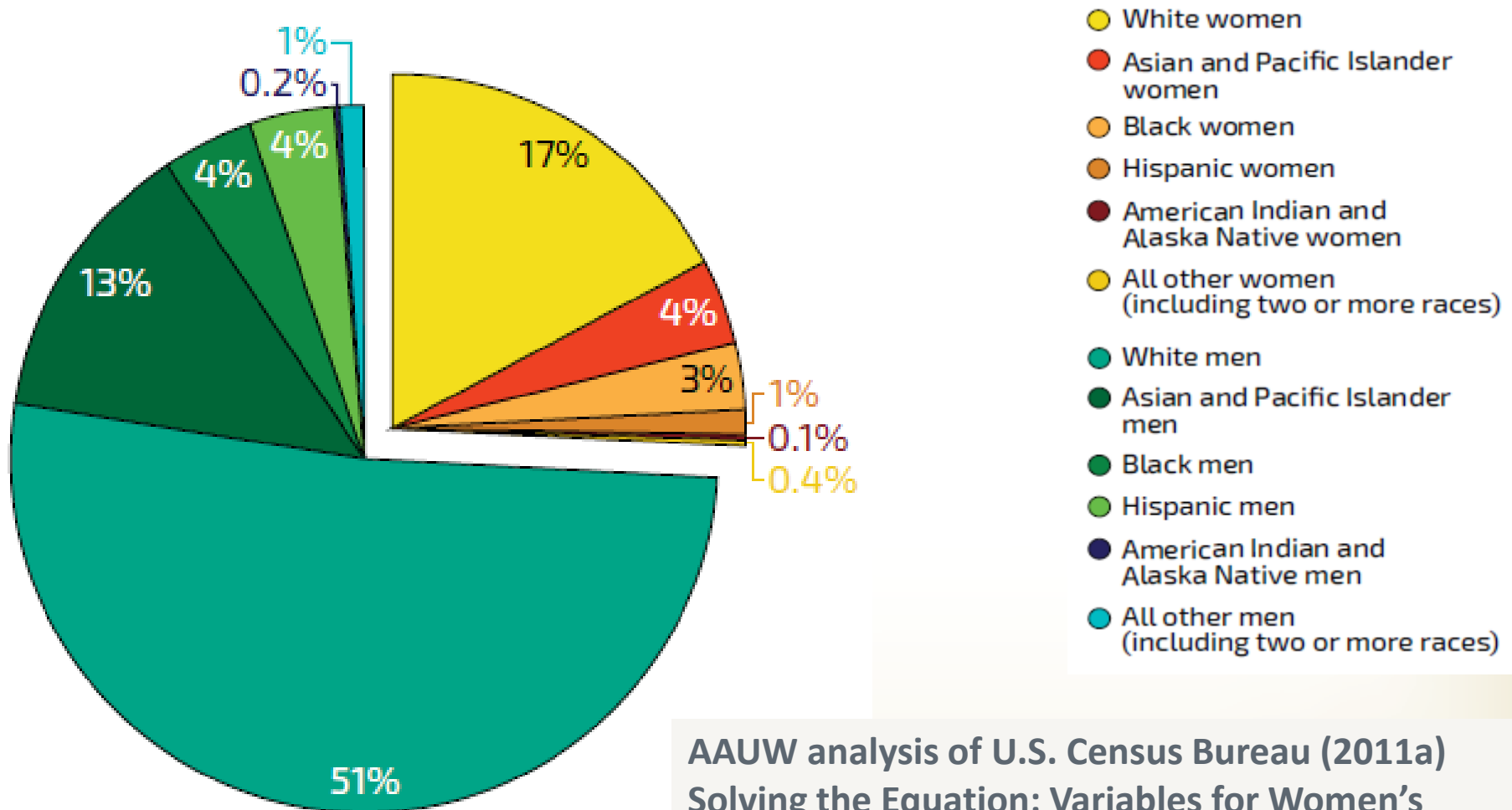
<http://www.aauw.org/research/solving-the-equation/>



Engineering Workforce by Gender and Race/Ethnicity: 2006-2010



Computing Workforce by Gender and Race/Ethnicity: 2006-2010



AAUW analysis of U.S. Census Bureau (2011a)
Solving the Equation: Variables for Women's
Success in Engineering and Computing, April 2015



*“While women and girls benefit from increased opportunities in areas such as mathematics and science, **our society also benefits overall when women and girls participate in those arenas.** The United States cannot remain educationally, economically, or technologically competitive without the contribution of all of its citizens...”*

(Stephanie J. Monroe, Assistant Secretary for Civil Rights,
June 22, 2007 Dear Colleague letter, pages 2-3)

Recommendations

- Create an environment that sparks curiosity in math and science
- STEM skills are learned, not innate
- Teach students that academic abilities are expandable and improvable
- Frame adversity as an experience common to everyone
- Encourage a growth-mindset
- Teach about the effects of stereotyping
- Move away from the idea that *certain people* are cut out for certain types of jobs
- Highlight the broad applications of engineering and computing
- Female role-models in STEM fields
- Create welcoming environments for girls in STEM
- Provide girls with opportunities to tinker and build confidence



Resources—STEM



- June 2007 Dear Colleague Letter

<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-20070622.html>

- Encouraging Girls in Math and Science

<http://ies.ed.gov/ncee/wwc/Docs/PracticeGuide/20072003.pdf>

- Solving the Equation: The Variables for Women's Success in Engineering and Computing

<http://www.aauw.org/research/solving-the-equation/>



Needs Assessment

- What additional support or information around Title IX would be helpful? What areas need additional clarification?
- What effective practices does your district/school already have in place? Would you be willing to share your process with other districts?



Thank You!

Rebekah Ottenbreit

ELD Specialist & Title IX State Coordinator

Office of Culturally and Linguistically Diverse Education

Unit of Federal Programs

Ottenbreit_r@cde.state.co.us

303-866-6285

https://www.cde.state.co.us/cde_english/titleix